PUBLIC PROSECUTOR v. TEE TEAN SIONG & 8 ORS.

[R. Cr. J. (Hashim J.) April 13, 1963]

[Kota Bharu — Criminal Revision No. 1 of 1963]

Penal Code, ss.109 and 292(a) — Whether attendances at a show of "blue films" amounts to exhibition — Whether there is "publication".

Undesirable Publications Ordinance, 1949 — Whether charge should have been properly under — Whether there is publication.

Theatres and Places of Public Amusement Enactment, 1936, s.3 — Charge — Whether would lie against operator or exhibitor.

The nine accused were arrested when they were trying to escape from premises that were being raided. The raiding police party found a projector and 4 reels of films and the accused were charged under sections 109 and 292(a) of the Penal Code. The learned Magistrate after being satisfied as to the obscenity of these films convicted all of them under sections 109 and 292(a) of the Penal Code. On revision,

Held: in the absence of other evidence mere attendance at a show where "blue films" are exhibited does not amount to abetment of the offence of exhibition under section 292(a) of the Penal Code.

Observations on section 24 of the Cinematograph Ordinance.

Cases referred to:—

(1) *Regina* v. *Coney & Others* (1881-82) 8 Q.B.D. 534.

(2) *Wilcox* v. *Jeffrey* [1951] 1 All E.R. 464.

CRIMINAL REVISION.

Hashim J.: I have called for the record of this case.

The 9 accused persons were charged under sections 109 and 292(a) of the Penal Code. They pleaded guilty to the charge and were convicted and sentenced to a fine of $45 or 6 weeks' imprisonment each.

It would appear that at about 9.50 p.m. on November 13, 1962 a police party raided premises No. 5230 "A" Jalan Kubor Kuda, Kota Bharu. When the police arrived a heavy object was thrown out of the room and people inside the room were trying to escape. The police managed to arrest the 9 accused persons who were trying to escape. The heavy object which had been thrown out of the room turned out to be a 8 M.M. Bell & Howell projector. The police also found a reel of film on the ground. The police also found 3 reels of films in the room. The reels of films were screened in the presence of the trial Magistrate on November 25, 1962 and he was satisfied they were obscene films popularly known as "blue films". All the 9 persons were convicted on November 26, 1962.

I should say *prima facie* mere attendance at the show, assuming there was an actual filming at the time of the raid, cannot amount to abetment which is defined in terms as an act in relation to the thing which is charged. If the charge is of exhibition one fails to see how the audience can be regarded as abetting the exhibition. They participate in the exhibition but that is not abetting. Of course, it might be said that without an audience there can be no exhibition, but it is possible to have a picture exhibited to an empty house. That is why, in the normal case, it is a member of the audience who provides the best evidence against one who is charged with exhibition. If, on the other hand, there is any cogent evidence that a few persons got together and incited or encouraged the possessor of the film to give a show by actually offering him payment in circumstances in which but for such incitement or encouragement there would have been no show, or where he provides knowingly the accommodation for such exhibition, such act will be caught by section 109 of the Penal Code and not otherwise. Moreover, it has got to be a *public* exhibition and without that ingredient there is no offence at all.

In *Regina* v. *Coney & Others* (1), a number of persons who were present at a prize fight were convicted of aiding and abetting such fight. The conviction was quashed on the ground that the direction by the Chairman of the Quarter Sessions to the jury was too wide, the direction being that physical presence at the fight should be held to be aiding and abetting. Cave J. held that where presence is not accidental, it is evidence for a jury to consider.

Wilcox v. *Jeffrey* (2) is a case under immigration law in which the Lord Chief Justice Goddard followed the principle in *Regina* v. *Coney & Others.*

It was considered, following *Regina* v. *Coney & Others,* that evidence should go to show that the presence of the audience was neither casual nor accidental, but deliberate. That would be inferred from the facts, particularly the showing in secret places, not normally known to members of the public, doors and windows being closed, etc. In such cases, and understandably, there has been no appeal where the correctness or legality of such a charge would be authoritatively decided.

I propose, therefore, to discuss and distinguish these cases and the relevant Penal Code sections. In the former case, one has to bear in mind that a prize fight (with fists), like a duel, is unlawful. The spectators or other persons aiding or encouraging it are considered principals to the act of assault and become members of an unlawful assembly on the ground that they are likely to resist any attempt to curtail the performance or show and thereby occasion a breach of the peace. In the latter case, the condition under which the American musician was permitted to land under the Aliens Order, 1920, was known to the appellant and the Court held, therefore, that there was "abundant evidence" that his attendance was deliberate and for the purpose of approving and encouraging what was

done. That Order made it an offence for any alien who having been allowed to land subject to conditions acting in breach of such conditions, as well as for any person aiding and abetting any other person in contravening its provisions. Although *Regina* v. *Coney & Others* was referred to in this case, its principle was really directed, in my view, to show that, unlike other members of the audience, the appellant with full knowledge of the condition imposed on the alien deliberately encouraged a breach thereof.

Section 292 of the Penal Code deals with matters contained in the Obscene Publications Act. Whether a film can be included in the term "publication" as normally understood is another aspect to be considered. The Control of Imported Publications now defines "publication" to include "any visible representation, any recording . . . . of any cinematograph film . . . ." but the definition of the same word in the Undesirable Publications Ordinance, 1949 would appear to be narrower and limited to what is generally understood to fall within the term "publication", namely printed or written matter. If there is no offence then under the Penal Code, is there an offence under any other law?

Section 24, Cinematograph Ordinance (No. 76 of 1952) can clearly be invoked and with far less onus on the prosecution (other than proof of possession) — for the obscenity or lewdness of the film will easily be satisfied by screening it to the Court—and it will be noted that it provides for a fine not exceeding $1,000, or imprisonment not exceeding six months or both, as compared with section 292 of the Penal Code where punishment is imprisonment not exceeding three months or fine or both. The exhibitor has sufficient possession to be caught under this section, as well as a person in mere possession. Destruction or disposal will, however, require the direction of the Minister (section 24(3)).

This section, of course, cannot be invoked as against members of the audience and the two English authorities will not be of any assistance. It may, however, be relevant after a consideration whether a charge under the Theatres and Places of Public Amusement Enactment (No. 47 of 1936) would lie against the operator. "Cinematographic exhibition" is defined in section 2 but appears again only in the definition of "theatrical performance". It should have been included in my view in the definition of public amusement.

A charge under section 3 would possibly lie against the exhibitor, and following the principles of the two cases cited, it may well be that the members of the audience can be charged for abetment under section 109 of the Penal Code and section 3 of Enactment No. 47 of 1936 where it can be shown that invitation (though secret) to the public (though only a section) was made and the price paid. Having regard to the nature of the film (being absolutely prohibited under section 24 of Ordinance No. 76 of 1952), it must be clear to the audience that the exhibitor would not be in possession of a licence under the Enactment. Such licence would not be granted where any performance is of an indecent, immoral or improper nature (see section 4(iii) of Enactment No. 47 of 1936).

In my view, therefore, 'blue films' should not be charged under section 292(a), or section 109 and section 292(a), but under section 24 of Ordinance No. 76 of 1952. On the whole, I should prefer to use the audience as witnesses rather than charge them.

I therefore exercise my powers under section 325(i) of the Criminal Procedure Code (Cap. 6). I reverse the finding and sentence of the learned Magistrate and discharge the accused persons. The fines, if paid, to be refunded to the accused persons.

Finding and sentence reversed; accused discharged.

SUPPIAH v. PONNAMPALAM

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) April 15, 1963]

[Ipoh — F.M. Civil Appeal No. 56 of 1962]

Land Laws — Charge — Appellant alleging that he did not know he was signing charge — Subsequent registration of charge — Notice to pay off — Collector making Order of foreclosure and sale — Appeal — Land Code (Cap. 138), ss. 141, 142 and 237.

Evidence — Whether charge has to be proved — Compliance with section 68 of the Evidence Ordinance, 1950.

The appellant was the registered proprietor of the land in question. By a charge registered on February 20, 1953 the appellant charged his land to the respondent for $8,000. On January 12, 1959 the respondent issued a notice under section 138 of the Land Code calling on the appellant to pay off the charge. The parties and their solicitors then appeared before the Collector of Land Revenue, Larut District on February 14, 1962 for the appellant to show cause why an order of foreclosure and sale should not be made in respect of his land. The Collector after hearing the parties held that there had been default in the obligation in respect of which the charge was given and made an order of foreclosure and sale in respect of the land. The appellant appealed under section 237 of the Land Code and this appeal was dismissed. On appeal to the Court of Appeal it was argued (a) that the Collector should have accepted the appellant's story as to how he came to sign the charge and should have given effect to that acceptance by refusing to make the order he did make for foreclosure and sale, (b) that the instrument of charge was not proved because the provisions of section 68 of the Evidence Ordinance were not complied with.

Held: (1) the Collector was bound to accept the register and once he was satisfied that the charge with which he was concerned was on the register then the only question for him to decide was whether or not there had been default in the payments provided for. If he was so satisfied he was obliged to make an order under the provisions of sections 141 and 142 of the Land Code. He has no power to investigate any allegation of fraud or misrepresentation and he could not have gone beyond granting a period of delay to enable the party making the allegation to take proceedings for rectification of the register under section 240. As the appellant had ample time to take proceedings for rectification of the register